

Before the
Commission on Common Ownership Communities
for Montgomery County, Maryland

In the Matter of	:	
Dawn M. Mancuso	:	
Complainant	:	
vs.	:	Case No. 339-0
Spring Lake Condominium	:	
Association	:	
Respondent	:	

DECISION AND ORDER

The above-entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Sections 10B-5(I), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 10th day of January, 1997, found, determined and ordered as follows:

On May 13, 1996, Dawn M. Mancuso, owner of 7520A Spring Lake Drive, Bethesda, MD 20817, hereinafter the Complainant, filed a formal dispute with the Office of Common Ownership Communities. The Complainant alleged that the Spring Lake Condominium Association Board of Directors (hereinafter the Respondent), refused to pay for damages that occurred to her unit in June and July of 1994 from water leakage from another unit in her building. The Complainant's unit sustained property damages of \$3,588.25 (as assessed by State Farm Insurance) and the Respondent received the sum of \$1,088.25 consisting of the damage amount less the Association's deductible of \$2,500.00. The Complainant alleged that it was the responsibility of the Respondent and Board to cover the cost of the deductible in the amount of \$2,500.00.

The Respondent and Board contends that the Declaration and Bylaws of the Condominium provide for an overall scheme of allocation of expenses related to damages and that the Complainant and/or the Complainant's own individual insurance carrier is responsible for the deductible amount of \$2,500.00. In fact, the Respondent further alleges that it had no responsibility to even file a claim at all with its own carrier and did so only as an accommodation to the Complainant.

The Complainant sought an Order requiring the Respondent Board to reimburse her the full cost of the damages(\$3,588.25) for the repair of her unit.

Inasmuch as the matter was not resolved through mediation this dispute was presented to the Commission on Common Ownership Communities for action pursuant to Section 10B-11(e). On October 23, 1996, the Commission conducted a public hearing in this cause.

FINDINGS OF FACT

Based on the stipulations of the parties and the testimony and evidence of record, the Commission makes the following findings:

1. The Complainant is the owner of the condominium unit at 7520A Spring Lake Drive, Bethesda, MD 20817, a unit within the Spring Lake Condominium.

2. In the summer of 1994 the Complainant's unit sustained significant water damage caused by water overflows from another unit in her building. The stipulated amount of damage was \$3,588.25.

3. The Master Condominium Insurance Policy maintained by Respondent pays for all covered damages in excess of a \$2,500.00 deductible. In this case, a claim was filed and the carrier paid the Respondent the sum of \$1,088.25.

4. The parties have stipulated that the damage that occurred is in the nature of the types of damage and perils normally covered by the insurance policies maintained by both the Respondent and the Complainant.

5. The Complainant made demand upon Respondent for the reimbursement of the full amount of the damage including the \$2,500.00 deductible.¹ The Respondent refused to reimburse the Complainant in that amount but has offered to forward the sum of \$1,088.25 that it received from its carrier to be used for the repairs of the unit.

6. The North Creek Condominium was established by Declaration dated sometime in 1973 and, as such, predates the enactment of the Maryland Condominium Act.

¹The evidence also shows that Complainant never filed a claim with her own insurance carrier, GEICO, to cover even the deductible amount of \$2,500.00 less her own deductible.

CONCLUSIONS OF LAW

Accordingly, the Commission concludes based upon a preponderance of the evidence, including, but not limited to testimony and documents admitted into evidence, and after a full and fair consideration of the evidence of record, that:

1. Pursuant to §11-114(a) of the Real Property Article of the Annotated Code of Maryland, it is the duty of the Council of Unit Owners to maintain, to the extent reasonably available, property insurance on the common elements and units, exclusive of improvements and betterments installed in units by unit owners, insuring against those risks of direct physical loss commonly insured against, in amounts determined by the Council of Unit Owners but not less than any amount specified in the Declaration or Bylaws. Further, pursuant to §11-114(g)(2) "(t)he cost of repair or replacement in excess of insurance proceeds and reserves is a common expense."

2. However, §11-142 of the Real Property Article details the applicability of the Maryland Condominium Act to condominiums that were established before July 1, 1982. In particular, §11-142(d) provides that "except to the extent that the declaration or master deed, bylaws or plat provide otherwise, Sections 11-114 and 11-123 of this title are applicable to all condominiums." As such, if the Declaration and Bylaws provide a different scheme with regard to insurance coverage, the scheme encompassed in those documents will control rather than the provisions detailed above in §11-114.

3. In fact, the Spring Lake Condominium Bylaws do detail a scheme of insurance and allocation of risk of loss between the Council of Unit Owners and the owner of an individual unit. In particular, Article XI deals with reconstruction or repair after fire or other casualty and, Section 7 of that Article reads as follows:

If the damage or destruction to the Common Elements to be repaired also includes damage or destruction to portions of a unit or if damage or destruction occurs within a unit and not to a common element, the Unit Owner has the sole responsibility to repair and reconstruct that portion of the Unit.

4. Section 1(f) of Article IX provides further that, while the Council of Unit Owners has the right to make certain repairs to individual units under certain circumstances, the Council of

Unit Owners is then required to assess the costs of those repairs against that condominium unit and those costs are then to be paid by the owner of such unit.

5. Inasmuch as §11-142 allows the Bylaws of a condominium that predated July 1, 1982 to impose a different insurance scheme than that detailed in §11-114, the insurance scheme laid out in the Bylaws control.

ORDER

In view of the foregoing, and based on the evidence of record, the Commission orders that:

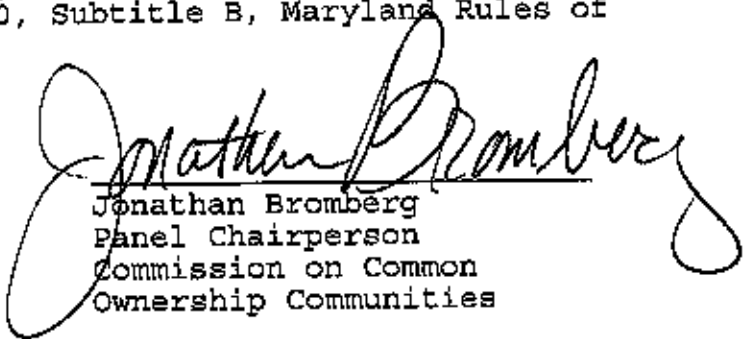
1. The Respondent need not reimburse the Complainant in the amount of \$2,500.00 of the deductible of insurance that was not paid to Complainant for the losses she sustained.

2. The Respondent is instructed to pay over to Complainant the sum of \$1,088.25 that it has received from its insurance carrier for the damage that occurred to Complainant's unit.

3. In accordance with the Bylaws of the Condominium, the expenses of the deductible were properly assessed against the Complainant.

4. The foregoing was concurred in by panel members Auvil, Blumberg, and Bromberg.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to Chapter 1100, Subtitle B, Maryland Rules of Procedure.


Jonathan Bromberg
Panel Chairperson
Commission on Common
Ownership Communities